



Commonwealth of Virginia  
Virginia Information Technologies Agency

**SOFTWARE**

**Optional Use Contract**

Date: September 6, 2006

Contract #: VA-060302-MITM

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

Contractor: Mitem Corporation  
640 Menlo Avenue  
Menlo Park, CA 94025

FIN: 77-0053782

Contact Person: Gale R. Augilar  
Phone: 650-323-1500

Term: March 2, 2006 – March 1, 2009

Pricing: Exhibit B

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:  
Virginia Information Technologies Agency  
Supply Chain Management

Jenny Larus  
Phone: 804-371-0920  
E-Mail: [jenny.larus@vita.virginia.gov](mailto:jenny.larus@vita.virginia.gov)  
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA):** Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.





## COMMONWEALTH *of* VIRGINIA

Virginia Information Technologies Agency  
110 SOUTH SEVENTH STREET  
RICHMOND, VIRGINIA 23219

June 20, 2006

MITEM CORPORATION  
Debby Scheraga  
ADMINISTRATION@MITEM.COM  
640 Menlo Avenue  
Menlo Park, CA 94025

Re: Contract # VA-041110-MITM and VA-60302-MITM

Dear Debby Scheraga,

As the Commonwealth and Northrop Grumman Information Technology, Inc. (Northrop Grumman) continue to work toward the Comprehensive Infrastructure Agreement Service Commencement Date, July 1, 2006, we want to keep you informed of the status of our contract with you.

On 6/12/2006 you were sent an email with a letter attached requesting that you work with us to obtain assignment of certain licenses ordered under the above referenced Contract with the Commonwealth to Northrop Grumman effective July 1. We have since learned that many of our contracts designated for assignment to Northrop Grumman provide goods and services to out-of-scope entities and/or provide out-of-scope goods and services to in-scope agencies (Executive Branch). In order to allow time to properly process the appropriate change to any of our contracts, we are withdrawing our notice to assign until we are able to conduct a more detailed review of your contract, discuss our options and continue toward a permanent change or disposition of our contract. Therefore, we would like to delay our request to obtain assignment of our licenses to allow Northrop Grumman, VITA and you to have more time to determine the appropriate action.

Meanwhile, because Northrop Grumman will begin providing services to the Commonwealth on July 1, we request that the above referenced Contract, as well as any applicable end user agreements, be amended to include the following clause:

The Commonwealth may allow access to the Software and Documentation by VITA'S third party vendors who are under contract with VITA to provide services to or on behalf of VITA. Access includes using, copying, modifying, transmitting, loading or executing the Software on behalf of the Commonwealth, as long as such third party vendors agree to comply with the confidentiality and use restrictions contained in this Agreement.

No response is required and your silence will be deemed consent, however if you have any questions please contact me by June 23, 2006.

We greatly appreciate your cooperation and will continue to rely upon you as we move forward with this important initiative.

Sincerely,

Kay Bradley  
kay.bradley@vita.virginia.gov  
Fax # 804-371-5969  
Supply Chain Management  
VITA

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## **SOFTWARE LICENSE CONTRACT (“SLC”)**

### **TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>3</b>
<b>2. DEFINITIONS</b>	<b>3</b>
A. Acceptance	3
B. Agent	3
C. Authorized User	3
D. Computer Virus	3
E. Confidential Information	3
F. Documentation	3
G. Electronic Self-Help	3
H. Requirements	3
I. Services	3
J. Software	3
K. Supplier	3
L. VITA	3
M. Warranty Period	3
<b>3. TERM AND TERMINATION</b>	<b>3</b>
<b>4. SOFTWARE LICENSE</b>	<b>3</b>
A. License Grant	3
N. License Type	3
<b>5. LICENSE FEES, ORDERING AND PAYMENT PROCEDURE</b>	<b>3</b>
A. License Fees and Charges	3
O. Reproduction Rights	3
P. Ordering	3
Q. Invoice Procedures	3
R. Purchase Payment Terms	3
S. Supplier’s Report of Sales and Industrial Funding Adjustment	3
<b>6. TRAINING AND DOCUMENTATION</b>	<b>3</b>
<b>7. DELIVERY AND INSTALLATION</b>	<b>3</b>
A. Scheduling	3
T. Evaluation and Acceptance Testing	3
U. Commencement Of Acceptance Testing	3
V. Required Performance Level	3
W. Acceptance	3
<b>8. GENERAL WARRANTY</b>	<b>3</b>
A. Ownership	3
X. Software and Documentation	3
Y. Limited Warranty	3
Z. Malicious Code	3
AA. Open Source	3
BB. Supplier’s Viability	3
B. Supplier’s Past Experience	3
<b>9. WARRANTY SERVICES</b>	<b>3</b>
CC. Known Defects	3
DD. New Releases	3
EE. Coverage	3
FF. Software Evolution	3
GG. Supplier’s Technical Support Obligations	3
HH. Initial Response	3
II. Supplier’s Technical Support Performance	3
JJ. Referral to MITEM Development Group	3

---

KK. Remedies	3
10. SOFTWARE SUPPORT SERVICES AND RENEWAL OPTIONS	3
11. COMPETITIVE PRICING	3
12. CONFIDENTIALITY	3
A. Treatment and Protection	3
LL. Exclusions	3
MM. Return or Destruction	3
13. LIABILITY AND INDEMNIFICATION	3
14. SECURITY COMPLIANCE	3
15. BANKRUPTCY	3
16. GENERAL	3
A. Relationship between VITA and Supplier	3
NN. Incorporated Contractual Provisions	3
OO. Governing Law	3
PP. Dispute Resolution	3
QQ. Advertising and Use of Proprietary Marks	3
RR. Notices	3
SS. No Waiver	3
TT. Assignment	3
UU. Captions	3
VV. Severability	3
WW. Survival	3
XX. Force Majeure	3
YY. Remedies	3
ZZ. Right to Audit	3
AAA. Offers of Employment	3
BBB. Entire Contract	3

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## SOFTWARE LICENSE CONTRACT

THIS SOFTWARE LICENSE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia, (hereinafter referred to as "VITA") and Mitem Corp. ("Supplier") to be effective as of February, 2006 ("Effective Date"). VITA and Supplier are referred to herein individually as "Party" and collectively as the "Parties."

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to grant a license to use Supplier's Software, MitemView, which is a web-enabling integration tool for legacy systems, and to provide various Services to the current Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Acceptance shall take the form of successful delivery or completed Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable order.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized User

Public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, that are currently using Mitem software and services listed in Exhibit A.

#### D. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

#### E. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### F. Documentation

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of the Software.

#### G. Electronic Self-Help

Any use of electronic means to exercise Supplier's termination rights upon breach or cancellation, termination or expiration of this Contract.

#### H. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Software product described in the applicable documentation. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]

#### I. Services

Any services, including installation, support and training provided by Supplier under this Contract.

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**J. Software**

The programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A.

**K. Supplier**

Includes any individual who is an employee, sub-contractor, or independent contractor of Supplier to provide Software and/or Services under this Contract.

**L. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

**M. Warranty Period**

The one year period following Acceptance of the Software.

**3. TERM AND TERMINATION**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, or extended by mutual written agreement of the Parties, shall continue to be effective and legally binding for a period of three (3) years. Subject to the mutual written agreement of both Parties, this Contract may be extended for up to two (2) additional one (1) year periods after the expiration of the initial three (3) year period. If the contract is not renewed after the original 3 year period, (or any subsequent renewal period), a 6 month contract extension shall be allowed. VITA will issue a written notification to the Supplier informing of extension, 30 days prior to the expiration of either the initial term or any subsequent renewal. VITA may terminate this Contract, in whole or in part, upon not less than 30 days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination, VITA shall have no future liability except for Services rendered or Software delivered by Supplier prior to the termination date.

**4. SOFTWARE LICENSE**

**A. License Grant**

- i). Supplier grants to all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to any Authorized User. Notwithstanding VITA's right to assign this Contract, the right to transfer, transmit and distribute shall be limited to within each Authorized User's organization.
- ii). All Authorized Users shall have the right to use, copy, transmit and distribute the Software for their benefit and for the benefit of their Agents, including internal and third-party information processing.
- iii). Any Authorized User may allow access to the Software by third party vendors who are under contract with the Authorized User to provide services to or on behalf of such Authorized User. Access includes loading or executing the Software on behalf of such Authorized User or its Agents.
- iv). The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.
- v). In the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation. Nothing contained in this Section

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shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.

- vi). An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, disaster recovery and development for no additional license fees or costs. These rights do not apply to the Software Development Kits (SDK). Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier.
- vii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
- viii). Except as provided or allowed by law, each Party agrees that it shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of the other Party.
- ix). Nothing contained herein shall be construed to restrict or limit an Authorized User's rights to use any technical data which such Authorized User may already possess or acquire under proper authorization from other sources.

#### **N. License Type**

All licenses granted, regardless of the type, include all uses set forth above.

The license granted under this Section authorizes all Authorized Users to use the Software on any system based on the total number of Concurrent Users. The number of "Concurrent Users" is defined as the average number of concurrent Sessions connected at a given point in time. A "Session" is defined as an active user executing the Software. The initial number of Concurrent User licenses granted herein is listed on Exhibit B. An Authorized User may increase the number of Concurrent User licenses upon issuing an order for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth on Exhibit B.

### **5. LICENSE FEES, ORDERING AND PAYMENT PROCEDURE**

#### **A. License Fees and Charges**

As consideration for the Software license(s) granted herein, an Authorized User shall pay Supplier the license fee set forth on Exhibit B, which lists any and all license fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Seasonally Adjusted (SA), as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

#### **O. Reproduction Rights**

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD. Such Authorized User shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.



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**P. Ordering**

Notwithstanding all Authorized User's rights to license Supplier's products under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's products. This Contract is non-exclusive and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Any order/payment transaction processed through the Commonwealth of Virginia's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then-current charge card limit.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Software and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

Supplier shall make available all appropriate and/or related Documentation at the time of delivery of the first unit of each Software type. Software delivered without the appropriate and required Documentation shall be considered "shipped short" until the applicable documentation has been received.

**Q. Invoice Procedures**

Supplier shall remit each invoice to the bill to address provided with the order promptly after all Software or Services have been accepted. Payment for Software support Services shall be quarterly in advance unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in Exhibit B or the executed order referencing this Contract. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Software or Service type and description
- ii). Quantity, charge and extended pricing for each Software and/or Service item
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (EIN).

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) OF ANY COUNTY, CITY OR TOWN LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA ARE THE SOLE OBLIGATION OF THE COUNTY CITY OR TOWN PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA.

**R. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, or any order, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

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If any purchases are to be supported by federal funding, and such funding is not made available, VITA may terminate this Contract, or an Authorized User may terminate an order, for goods or services dependent on such federal funds without further obligation.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Software has been shipped. Charges older than ninety (90) days from date of shipment or date of service performance may not be paid.

In the event Software is shipped without the applicable Documentation, payment shall not be due until 30 days after the required documentation is provided.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. All payment terms are net 30 days after Acceptance.

#### **S. Supplier's Report of Sales and Industrial Funding Adjustment**

The Supplier shall submit the "Supplier Monthly Report of Sales" which will be available online (web address to be provided upon award). The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10<sup>th</sup> day of every month, reporting all invoices paid by Authorized User for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The Supplier Monthly Report of Sales template (in MS Excel format) indicated at the link to be provided is required to be used by the Supplier and provided to VITA.

The "Supplier Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, Supplier's tax identification number, invoice date, invoice number, this Contract number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

At the same time as submission of the "Supplier Monthly Report of Sales", the Supplier shall submit Industrial Funding Adjustment payment in the form of a check or electronic funds disbursement made payable to the Controller of VITA. The Industrial Funding Adjustment is equal to 2% of total sales under this Contract. Supplier shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Supplier shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

### **6. TRAINING AND DOCUMENTATION**

The license fee includes all costs for the training of one Authorized User trainer at VITA's designated location on the use and operation of the Software, including instruction in any necessary conversion of VITA's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

Supplier shall deliver to each Authorized User, one (1) complete hard copy or electronic media of Documentation, as requested by Authorized User. Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step operating procedures for each screen and activity, and technical reference manuals. Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Software and may duplicate such Documentation and include it in an Authorized User document or platform. Authorized User shall continue to include Supplier's copyright notice.

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## **7. DELIVERY AND INSTALLATION**

### **A. Scheduling**

Supplier shall deliver Software according to the delivery dates set forth on the appropriate order.

### **T. Evaluation and Acceptance Testing**

Supplier shall make available to any Authorized User Software for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than 30 days. Each new project is entitled to an evaluation copy regardless whether an Authorized User has previously licensed the Software.

### **U. Commencement Of Acceptance Testing**

The Software shall be considered ready for testing when the Supplier provides the Commonwealth with the documentation of a successful system audit or diagnostic test, performed at the site at which the Software is installed, which demonstrates, to the satisfaction of Authorized User, that all Software meets the minimum design capabilities specified by the Supplier. If the Supplier certifies that the Software is ready to undergo acceptance testing prior to the scheduled delivery date, VITA, at its option, may elect to test the Software and change the delivery date accordingly.

### **V. Required Performance Level**

To qualify for acceptance, all Software must perform concurrently in accordance with the technical specifications and functional descriptions contained or referenced in this Contract, at an average effectiveness level of 98% or greater, calculated over a period of thirty consecutive days. VITA shall not pay any charges, either in advance or in arrears, associated with the Supplier's requirement to achieve this performance level. If any Software does not meet the standard of performance during the initial 30 consecutive days of installation, the acceptance period shall continue on a day-to-day basis until all Software concurrently meets the standard of performance for 30 consecutive days. VITA may delay the start of the acceptance period, but such delay shall not exceed 30 days.

### **W. Acceptance**

The Software shall be deemed accepted on the first day after performing in accordance with the required performance level as defined above for 30 consecutive days. Upon request, Authorized User shall provide written confirmation of acceptance. If the required performance level has not been met after forty-five (45) calendar days have elapsed from the start of the acceptance period, VITA may require a replacement be provided.

## **8. GENERAL WARRANTY**

Supplier warrants and represents to VITA the Software described in Exhibit A as follows:

### **A. Ownership**

Supplier is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### **X. Software and Documentation**

Supplier warrants the following with respect to the Software:

- i). If the Software is pursuant to a particular Request for Proposal ("RFP"), such Software shall be fit for the particular purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Software and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Software;
- ii). If such license granted is pursuant to a particular RFP and the RFP specified the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of 5 years of the Effective Date. However Supplier will in no

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event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by an Authorized User.

- iii). The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order;
- iv). No corrections, work arounds or future Software releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- v). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow an Authorized User to operate the Software without reference to any other materials or information.

**Y. Limited Warranty**

During the Warranty Period, Supplier warrants that the Software shall not contain any material errors and shall function properly and in conformity with the Requirements. Supplier shall correct all errors that result in a failure of the Software to function as specified in Supplier's Proposal that are identified during the Warranty Period at no additional cost to any Authorized User.

**Z. Malicious Code**

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Software at the time of delivery to an Authorized User; and the Software does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Software. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**AA. Open Source**

Supplier will notify all Authorized Users if the Software contains any Open Source code and identify the specific Open Source License that applies to any embedded code or code dependent on Open Source code, provided by Supplier under this contract.

**BB. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could threaten performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**B. Supplier's Past Experience**

Supplier warrants that the Software has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the Software or Supplier.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.**

**9. WARRANTY SERVICES**

At any time during the Warranty Period, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the Software in accordance with the Requirements:

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**CC. Known Defects**

Promptly notify all Authorized Users of any defects or malfunctions in the Software or Documentation of which it learns from any source, correct any such defects or malfunctions or provide a work around until corrected, within ten (10) days of knowledge of such defect or malfunction and provide all Authorized Users with copies of correction or work around.

**DD. New Releases**

Provide to all Authorized Users no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

**EE. Coverage**

7:00 A.M. to 7:00 P.M. Eastern Time, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Software.

**FF. Software Evolution**

Should Supplier merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User be charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software.

**GG. Supplier's Technical Support Obligations**

Supplier's Technical Support personnel will use reasonable efforts to correct any reported problem. Supplier's support obligations hereunder are limited to the Software described in Exhibit A, and do not encompass problems in software developed by others, which may interact or work with the Software.

**HH. Initial Response**

When a problem is reported by an Authorized User, such Authorized User and Supplier will designate such problem as Priority Level 1, 2, or 3, in accordance with the following descriptions. Supplier shall respond to reported problems accordingly, as follows.

**Level 1:** Authorized User's development or production is halted or Authorized User's ability to continue development is severely impacted. Supplier will respond within four (4) hours.

**Level 2:** Authorized User's development or production is affected but can continue for a reasonable period of time before becoming critical. Supplier will respond within twenty-four (24) hours.

**Level 3:** An Authorized User inquiry into the basic functionality of the Software. Supplier will respond within forty-eight (48) hours.

Authorized User will assist Supplier in the assignment of a Priority Level by characterizing the problem and describing its impact on Authorized User operations, production application, or development efforts. Within each Priority Level, consideration will be given to the date and time the problem is reported, and the number of customers who are affected by the problem.

**II. Supplier's Technical Support Performance**

Supplier's Technical Support personnel, when contacted by an Authorized User, shall provide reasonable and effective resolution of the problems reported to Supplier, within three (3) business days. "Resolution" is defined as:

- i). Providing an actual solution to the problem reported; or
- ii). Providing a reasonable and effective work-around to the problem report, where "work-around" refers to an alternative method or mode of operation or procedure which, while not specifically solving or eliminated the reported problem, does provide a way to achieve desired functional results within the Authorized User's organization; or

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- iii). Determining that the reported "problem" is not in fact a departure or deviation from the design or performance specifications of the Software, and therefore should be deemed a request for enhanced, improved or expanded features for the Software (in which case it will be referred to the Supplier's Product Development Group for consideration as a possible upgrade in future Software releases); or
  - iv). Referring the reported problem to the MITEM Development Group ("MDG") for further review, on the basis that actual software development or change (new or revised code) is the only available method to resolve the reported problem.

#### **JJ. Referral to MITEM Development Group**

When reported problems have been referred to the MITEM Development Group ("MDG"), MDG will use all reasonable efforts to correct the reported problem in a timely and effective manner, generally responding to referrals in the sequence received. In order to ensure that MDG devotes attention to such problems in a manner which recognizes the severity each problem, and the importance of timely resolution, Priority Level assignment may be reviewed to ensure that the problem was initially given an appropriate Priority Level. As with the Initial Response, within each Priority Level, consideration will be given to the date the problem is reported, and the number of Supplier's customers who are affected by the problem.

#### **KK. Remedies**

If Supplier is unable to make the Software conform, in all material aspects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the Software, and return all monies paid by such Authorized User for the returned Software and Documentation.

### **10. SOFTWARE SUPPORT SERVICES AND RENEWAL OPTIONS**

After expiration of the Warranty Period, Supplier shall provide Software support services ("Support Services") no less than the Warranty Services, including new releases, updates and upgrades for an annual fee (refer to Exhibit B) of 18% of the license fee paid by any Authorized User for then current installed base, renewable annually at such Authorized User's option for a period of four (4) years. Thereafter, any increase in the fee to renew Support Services shall not to exceed the fee charged for the preceding year's Support Services by more than 3 percent or the annual change in CPI, as defined in the License Fees and Charges Section, whichever is less. Supplier warrants that it shall make Support Services available for all the Software products listed in Exhibit B for a period of at least five (5) years from the Effective Date of this Contract. Any Authorized User, at its sole option, may acquire Support Services. Cancellation of Support Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

### **11. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to commercial or government customer of Supplier for equivalent quantities and levels of support. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide equivalent quantities of Software or equivalent levels of services under more favorable prices, as the prices may be indicated on Supplier's current US and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

### **12. CONFIDENTIALITY**

#### **A. Treatment and Protection**

Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the

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Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by a non-disclosure Contract with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

**LL. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). independently developed by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**MM. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

**13. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Authorized User's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Authorized User's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Software or the Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Software or services, or any component thereof; or (b) replace or modify such infringing Software or services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Software or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Software. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Software or services, along with any other

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components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

#### **14. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of Authorized User's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by VITA and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold VITA, its officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, its officers, directors, agents or employees, on account of the failure of Supplier to perform obligations pursuant to this Section.

#### **15. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the Parties that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

#### **16. GENERAL**

##### **A. Relationship between VITA and Supplier**

Supplier has no authority to contract for VITA or in any way to bind or to commit VITA to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA, shall be reimbursed by Supplier upon demand by VITA.



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**NN. Incorporated Contractual Provisions**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision §2.2-4363 of the Code of Virginia: [http://www.vita.virginia.gov/procurement/documents/terms\\_05-06sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf).

**OO. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

**PP. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures. Supplier may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

**QQ. Advertising and Use of Proprietary Marks**

Supplier shall not use any Authorized User's name or refer to any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of Such Authorized User. In no event may Supplier use a proprietary mark without receiving the prior written consent of the Authorized User.

**RR. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

**SS. No Waiver**

Any failure to enforce any terms of this Contract shall not constitute a waiver.

**TT. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent

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shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be 15 days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**UU. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**VV. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**WW. Survival**

The provisions of this Contract regarding Software License, Warranty, Escrow, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**XX. Force Majeure**

Neither Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

**YY. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

**ZZ. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Software purchased and Services rendered or the amounts due Supplier for such Software and Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Five (5) years from Software Acceptance date or Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.
- iv). Authorized User or VITA on behalf of Authorized User shall, upon periodic request, provide written certification, executed by an officer of Authorized User or VITA, to Supplier that Authorized User and VITA are in full compliance with all the terms and conditions set forth in this Contract and that its use does not exceed the license scope granted to Authorized User pursuant to the terms and conditions set forth in the Contract. Authorized User shall immediately remit to Supplier any shortfall in payment disclosed by the certification including any interest in accordance with §2.2-4347 et seq. of the Code of Virginia.

**AAA. Offers of Employment**

During the first twelve (12) months of the Contract, should Supplier hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall compensate the Authorized User for 50% of the employee's annual salary in effect at the time of termination.

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**BBB. Entire Contract**

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Description of Software
- ii). Exhibit B Software Product List, Software License Fee, Service Charges and Payment Schedule

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedents shall apply: the Contract, Exhibit A, Exhibit B, any orders issued pursuant to the Contract.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier

By:



(Signature)

Name: Gale R. Aguilar

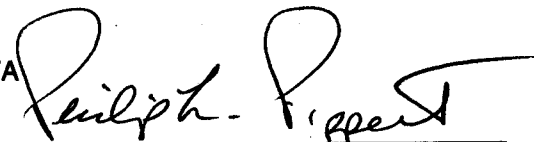
(Print)

Title, Its: President and COO

Date: February 23, 2006

VITA

By:



(Signature)

Name:

PHILIP L. PIPPERT

(Print)

Title, Its:

ASSOCIATE DIRECTOR, SEM

Date:

3/2/06

Address for Notice:

MITEM Corporation

640 Menlo Avenue

Menlo Park, CA 94025

Attention: Gale R. Aguilar

Address for Notice:

V.I.T.A.

110 South Seventh St. Suite 135  
Richmond, VA 23219

Attention: Contract Administrator

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## Exhibit A

### MitemView Product Description

**MitemView** is a non-invasive middleware integration tool. It is used to create new web-based applications taking advantage of the capabilities and functionality of existing legacy systems without having to modify or replace those systems. It is comprised of two equally important components, a development tool and a runtime module.

In order to develop integrated applications with *MitemView*, you must first have a **development tool (SDK)** which, working with a standard development language such as JAVA or a .Net language, is used to create the actual applications. Once the applications are developed, a runtime module is required to deploy them to a server.

To be successful using a tool such as *MitemView*, a developer needs to be trained in the use of the tool. The purpose of this **training** is to introduce the developers to the concepts and capabilities of the tool, and to give them some rudimentary experience in applying those capabilities to solve particular integration problems.

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## Exhibit B

### MitemView Price List July 18, 2005

#### MitemView Pricing for Web-enablement

Deployment of a MitemView Web solution requires a combination of:

1. at least 1 development tool
2. a base server license with a minimum of either 10 users or 5 concurrent host sessions, and
3. training class for all developers.

#### MitemView Development Toolkit \$18.061

One development toolkit is required for each developer

#### MitemView Server Runtime License (base license) \$42143

The MitemView Server Runtime is licensed in one of two modes:

- **By Application User:** The total number of Users that either directly or indirectly access the MitemView Server Runtime(s). Licensing is independent of the number of physical servers used to host a single Server Runtime license. Licensee must explain, to MITEM's satisfaction, the basis for establishing the total size of the User community. Additional Server Runtime licenses are required when an additional Server Runtime is needed and the additional server will not be an exact mirror image of the current software application implementation. If the new Server Runtime license expands the total User community then additional User licenses are also required. Base pricing accommodates a 1:1 ratio of Users to Concurrent Host Sessions (CHS) e.g. a 300 User license will be manufactured with 300 CHS. Additional CHS per User may be purchased according to the MitemView Options table below.
- **By Concurrent Host Sessions (CHS):** The total number of Concurrent Host Sessions available for use by a single Server Runtime license. A single Server Runtime License may be used to mirror the same identical MitemView-based program, or set of programs, across multiple physical servers for systems management purposes e.g. load sharing, fail-over and testing. Regardless of how many physical servers are used to host a single Server Runtime, the actual number of CHS must not exceed the licensed limit. For all other purposes the purchase of additional Server Runtime Licenses is required.

#### Application User Server License Fee

**\$ 542 ea.**

If server is licensed by Application User, the minimum initial order quantity of 50 users. Subsequent orders must be in units of 10 or more.

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<b>Concurrent Host Server License Fee</b>	<b>User 1 – 10</b>	<b>\$3,612 ea.</b>
	<b>User 11 – 50</b>	<b>\$3,010 ea.</b>
	<b>User 51 – 100</b>	<b>\$2,408 ea.</b>
	<b>User 100+</b>	<b>\$1,806 ea.</b>

If a server is licensed by Concurrent Host Session, the minimum order must be in increments of 5 CHS.

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**MitemView Options Table:**

If Customer wants to license additional Options the license fees are as follows:

Additional Language User	<b>\$241/CHS or \$60/Application</b>
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Additional Presentation Option User	<b>\$241/CHS or \$120/Application</b>
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Additional Concurrent Host Sessions (Application User Only) User	<b>\$120/Application</b>
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**Training:**

MitemView Server Application Development, 4 days, Central Site (Gaithersburg, MD)

**\$3,061/student**

Language: Visual Basic or Java/.NET/C#.

<b>Consulting Services:</b> expenses	<b>\$2,041/day, 3 day minimum, plus</b>
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**Maintenance & Support:**

**18%**

All prices quoted include the first year's maintenance & support. Subsequent years are payable in advance at 18% of the then current license fees and are guaranteed not to escalate by more than 10% per year.

***Any software or license fees not listed on this price sheet will be quoted by MITEM Corporation. Please call 800-826-4836.***